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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,464	08/01/2003	John Mix	FINIS-00100	2040
28960	7590	01/10/2005	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			TRIEU, VAN THANH	
			ART UNIT	PAPER NUMBER
			2636	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,464

Applicant(s)

MIX ET AL.

Examiner

Van T Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/23/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1. Claims 1, 3-6, 8-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by **Lee et al** [US 6,837,827].

Regarding claim 1, the claimed portable electronic device is configured to provide an audible signal at a repeated frequency selectable by a user wherein the repeated frequency corresponds to an interval between two tenths of a second to ten minutes and wherein the electronic device comprises (the portable personal training device 10 emits audible cues at a repeated frequency at one-second intervals selected by its user, see Figs. 1, 3 and 12, col. 9, lines 21-36); and the timing unit contained within a waterproof housing (housing 92 is waterproof by gaskets or seals 96, see Fig. 1, col. 6, lines 19-28); and the timing unit comprises: a plurality of buttons configured to allow the user to select a single frequency as the repeated frequency (the user interface 50 having a plurality of buttons, see Figs. 1 and 2, col. 5, lines 26-33 and col. 9, lines 21-36); and the display configured to display a numerical representation of the repeated frequency selected by the user (the visual display 58, see Figs. 2-18, col. 5, lines 40-50

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and col. 8, lines 21-47); and the power source (the battery 90, see Fig. 1, col. 6, lines 15-19); and the detachable clip member configured to detachably couple to the timing unit (the attachment mechanism 94, see Fig. 1, col. 6, lines 34-49).

Regarding claim 3, all the claimed subject matters are cited in respect to claim 1 above, see Fig. 2, col. 5, lines 25-38.

Regarding claim 4, all the claimed subject matters are cited in respect to claim 1 above, such as plastic, nylon, aluminum or any combination thereof, see col. 6, lines 23-28.

Regarding claim 5, all the claimed subject matters are cited in respect to claim 1 above, and including housing 92, programmable timing circuit, see col. 5, lines 44-58.

Regarding claim 6, all the claimed subject matters are cited in respect to claims 4 and 5 above.

Regarding claim 8, all the claimed subject matters are cited in respect to claim 5 above.

Regarding claim 9, all the claimed subject matters are cited in respect to claims 1 and 5 above.

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Regarding claim 10, all the claimed subject matters are cited in respect to claim 5 above.

Regarding claim 11, all the claimed subject matters are cited in respect to claims 1 and 5 above.

Regarding claim 12, all the claimed subject matters are cited in respect to claim 11 above, and including the storage memory 64, see Figs. 1, 6 and 7, col. 5, lines 62-67, col. 6, lines 1-3 and col. 7, lines 32-52.

Regarding claim 13, all the claimed subject matters are cited in respect to claim 11 above, and including the processor chip 60, see Fig. 1, col. 5, lines 11-65.

Regarding claim 14, all the claimed subject matters are cited in respect to claim 13 above, and including converting cycle frequency to second time, see col. 9, lines 24-36.

Regarding claim 15, all the claimed subject matters are cited in respect to claims 1 and 11 above.

Regarding claim 17, all the claimed subject matters are cited in respect to claims 4 and 11 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 2, 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lee et al** [US 6,837,827] in view of **Widjaja et al** [US 5,599,274].

Regarding claims 2, 7 and 16, **Lee et al** fails to disclose the detachable clip member is further configured to detachably couple to goggle. However, **Lee et al** teaches that the portable electronic device 10 is attached to a user by an attachment mechanism 94 in the form of elastic such as armband type, waistband type, a belt-hook type or over-the-shoulder type for attaching/detaching to user's body. The portable device 10 can be used by an exerciser or other user on a land-base activities or water-base activities, see Fig. 1, col. 3, lines 4-7 and col. 6, lines 34-49. **Widjaja et al** suggests that a portable

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control module 10 having an audio-visual module 12 with a LCD display 20, a plurality of buttons. The audio-visual module 12 includes a video unit 42 and an audio unit 44 being attached to the frame 48 of the goggles by an adjustable mounting arm 50, see Figs. 1-9, col. 3, lines 16-54. Therefore, it would have been obvious to one skill in the art at the time the invention was made to modify the portable electronic device of **Lee et al** for attaching to the goggle such as of **Widjaja et al** since the goggle is worn by a user's head during jogging, running or exercising, which provide a great convenience to the user to be free of hands while giving a greater listening to the tones or sounds from the portable electronic device.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Searcy discloses portable self-contained computational device for use by a striding athlete jogger/runner to pre-select a normal length of stride and a rate selector permitted the athlete to pre-select a desired rate of travel by striding in minutes/mile.

The portable device includes a programmable microprocessor, memories, a LCD display and a loudspeaker for providing tones serve as striding or pacing cues, enabling the athlete to stride by jogging in pace or synchronism with the tone. [US 4,220,996]

Smith discloses a pacing timer for a runner which including an internal memory for storing split distances and target times as well as a variety of stride lengths which corresponding to various speeds of the runner. [US 4,285,041]

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Morokawa discloses a portable pacing timing device for timing steps or other actions during physical exercise to provide audible tone bursts as timing information and equipped with means for setting the repetition rate and rhythm of the tone bursts to suitable values. [US 4,337,529]

Berghofer discloses an assistance device for sports training of sports requiring rhythmic activity. Audible prompts are delivered to the user so that he/she knows when to engage in a certain activity of the sport. [US 5,082,281]

4. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. **Jeffery Hofsass** can be reached on (571) 272-2981.

A handwritten signature in black ink, appearing to read 'Van Trieu', with a long horizontal flourish extending to the right.

Van Trieu
Primary Examiner
Date: 1/5/05